

**OPERATING LEASE AGREEMENT BETWEEN  
LAKE COUNTY, FLORIDA  
AND HIGHLAND TRACTOR CO.  
FOR WHEEL LOADERS**

**RFP #12-0809**

**THIS OPERATING LEASE** Agreement is made by and between Lake County, Florida, a political subdivision of the State of Florida, hereinafter the "County", and Highland Tractor Co., a Florida corporation, its successors and assigns, hereafter "Lessor."

WHEREAS, the County has publicly issued a Request for Proposal, RFP #12-0809, in accordance with the Lake County Purchasing Policies and Procedures for firms qualified to provide long term leasing of wheel loaders for the Lake County Public Works Department; and

WHEREAS, the Lessor desires to provide such equipment subject to the terms of this Agreement.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual terms, understandings, conditions, premises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by reference.

2. **Lease Term.** The Lease term for each unit identified in the Equipment Schedule attached hereto and incorporated herein by reference as **Exhibit A**, shall commence on its "Delivery Date", which is the date the County takes possession of the unit(s), and shall continue for a period of sixty (60) months, unless otherwise terminated. All parties agree that title to the units shall at all times remain with the Lessor.

3. **Operating Lease.** Lessor agrees and acknowledges that this is an Operating Lease only. Lake County is not soliciting any equity or ownership in the unit(s). The County shall not accept any U.C.C. (Uniform Commercial Code) filings. The County shall not provide an IRS (Internal Revenue Service) Form 8038 / 8038G.

4. **Payments.** During the lease term, the County shall make all lease payments on a timely basis, including lease payments that are required to be made in the renewal term, if any. The payment schedule is attached hereto and incorporated herein in **Exhibit A**. The County shall not be entitled to cancel or terminate this Lease except as expressly provided herein. Any lease payment received from the County shall be applied to this Lease. All lease payments shall be paid one (1) month in arrears. If the County fails to make lease payments within ten (10) days

of the payment due date, the County shall pay Lessor a late charge in an amount permitted by applicable law.

5. **Option to Renew; Option to Purchase.** The initial Lease Term may be renewed for successive one (1) year periods at the same pricing, terms and conditions contained herein, upon sixty (60) days written notice to the Lessor prior to the expiration of the then current lease term. If the County is not in default under this Lease, the County may purchase any particular item of equipment on the lease termination date, or any renewal thereof, at the fair market value of the equipment. Fair market value shall be determined by reference to recent sales of used equipment of similar type and condition and/or by reference to the Green Guide Construction Equipment, published by PriMedia Books, current as of the time the County exercises the purchase option. If the parties cannot agree on the fair market value based upon sales of similar equipment or by use of the Green Guide Construction Equipment, the parties agree to have the Equipment valued by an independent appraisal company, mutually agreed upon, specializing in this type of equipment, and to equally divide the cost of such appraisal. To exercise the purchase option the County must notify the Lessor sixty (60) days prior to the end of the initial Lease Term, or applicable renewal term.

6. **Assignment.**

- A. No assignment of this Lease, nor assignment of any right or obligation hereunder may be made by the County or by the Lessor without the prior written consent of the other. **IN THE EVENT THAT THE LESSOR ASSIGNS THIS LEASE, THE ASSIGNEE SHALL AGREE IN WRITING TO ASSUME ALL OBLIGATIONS CONTAINED WITHIN THIS LEASE, INCLUDING ALL MAINTENANCE RESPONSIBILITIES DESCRIBED HEREIN.** Failure of assignee to assume all responsibilities hereunder shall void the assignment. Lessor shall remain liable for its performance under this Lease regardless of any assignment. The County shall have the right to review the assignment and shall be provided a copy of any associated documents perfecting the assignment.
- B. In the event Lessor elects to assign this Lease Agreement, and the County approves the assignment, the assignment shall be in the form attached hereto and incorporated herein by reference as **Exhibit B.**

7. **Service and Use of Equipment.** Lessor shall provide, at no cost to the County, operator training to County sufficient to ensure efficient operation of the Equipment and shall provide at least two (2) copies of service, parts and operator's manual to County. County shall only be responsible for daily fueling, checking of fluid levels and adding fluid if necessary, greasing of fittings if required, reporting to the Lessor any maintenance required, fire damage and repair, all repair costs resulting from damage due to fire not caused by machine malfunction, windstorm, flood, vandalism, accidents, and operator's negligence. Otherwise, all service, maintenance and repairs shall be the responsibility of the Lessor and shall be conducted in accordance with the following:



- A. **Operational Condition.** Units shall be well maintained in top operating condition with 100% of all parts, components, and systems operational. All pin, hitches and moving parts shall be tight and within manufacturers standards or tolerances. Engines, transmissions, drive axles, and hydraulic systems shall be in peak operational condition at all times absent of leaks, blowby, reduced hydraulic pressures or driveline noise.
- B. **Downtime.** Should the Lessor fail to complete the required service, maintenance, or repairs and return the equipment to duty, or should the Lessor fail to supply the necessary parts or labor to effect the repair within forty-eight (48) continuous hours, including holidays, Saturdays and Sundays, from telephonic notification by the County to the Lessor, a delay charge equal to eight hundred dollars (\$800.00) per calendar day, per unit, shall be deducted from any leasing charge or maintenance fee schedules. Lessor shall be given the option of furnishing like equipment in lieu of the delay charge. Delay charges shall not be charged when the delay is a result of a natural disaster.
- C. **Transportation.** All transportation for service, maintenance and repair shall be the responsibility of the Lessor.

Lessor shall be entitled to inspect the Equipment during regular business hours at County's place of business. County shall not install any accessory or device on the Equipment, except for such as may be removed without affecting the originally intended function or use of the Equipment. The County shall be entitled to unlimited usage of the Equipment during the Lease Term.

**8. Return of Equipment.** With respect to each unit, upon early termination of this Lease, or if the above option to purchase is not exercised, at the expiration of the Lease Term or any renewal thereof, the County shall return the equipment, at the County's expense, to Lessor at a place designated by the County. In the event Lessor instructs the units to be returned to a place not so designated by the County, the return of the units shall be at the Lessor's expense.

**9. Disclaimer.** County agrees that the Equipment has been selected by the County; the Equipment has been inspected by the County and County is satisfied that the Equipment is suitable for its purpose; Lessor is not the manufacturer of Equipment; and Lessor has not made any express warranties regarding this Equipment.

**10. Insurance.** County shall maintain public liability insurance on the Equipment with a minimum liability limits in the amount of \$1,000,000.00 per occurrence for bodily injury, including death, and in the minimum amount of \$250,000.00 per occurrence for property damage. County shall deliver to the Lessor, upon request, certificates or other evidence satisfactory to Lessor that insurance is maintained as required under this Lease. Lessor shall provide and maintain during the entire term of this Agreement insurance in the following types and limits with a company or companies authorized to do business in the State of Florida. Lessor shall not commence work under the Agreement until the County has received an acceptable certificate or certificates of insurance evidencing the required insurance, which is as follows:

(X) General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

- (X) General Liability
  - (X) Each Occurrence/General Aggregate \$1,000,000/1,000,000
  - (X) Products-Completed Operations \$500,000
  - (X) Personal & Adv. Injury \$500,000
  - (X) Fire Damage \$50,000
  - (X) Medical Expense \$5,000
  - (X) Contractual Liability

(X) Automobile liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$300,000
or	
Bodily Injury (per person)	\$100,000
Bodily Injury (per accident)	\$300,000
Property Damage	\$100,000

( X ) **Lake County, A Political Subdivision Of The State Of Florida, And The Board Of County Commissioners**, shall be name as additional insured as their interest may appear on the:

(X) General liability policy

(X) Garage Keepers Liability

(X) Workers' compensation insurance in accordance with Florida Statute, Chapter 440, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc).

(X) Certificates of insurance shall provide for a minimum of thirty (30) days prior written notice to the County of any change or cancellation of the required insurance.

(X) Certificates of insurance shall identify RFP #12-0809 in the Description of Operations section of the Certificate.

(X) Lessor shall be responsible for subcontractors and their insurance.

(X) The Certificate holder shall be: LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND THE BOARD OF COUNTY COMMISSIONERS, P.O. BOX 7800, TAVARES, FL 32778-7800



(X) If it is not possible for the Lessor to certify compliance, on the certificate of insurance, with all of the above requirements, then the Lessor is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

**11. Loss or Damage.**

- A. All risk of loss or damage to the Equipment shall be the responsibility of the County, with exception of loss or damage resulting from the failure of Lessor to maintain the Equipment in accordance with this Lease. If any unit becomes stolen, destroyed or irreparably damaged from any cause other than from acts of the Lessor during the Lease Term, County shall give Lessor prompt notice thereof. County shall, in its sole discretion, elect to use the proceeds from any insurance claim to be applied to the repair of the Equipment or to payment of any obligation hereunder.
- B. The County shall be responsible for injury or death of any person, to the extent permitted by section 768.28, Florida Statutes, that arises out of County's possession, use, operation or storage of the Equipment.

**12. Fees and Property Taxes.** Unless otherwise provided herein, the County shall not be responsible for any taxes and fees.

**13. Event of Default.** A party shall be in default of this Lease by failing to perform or observe any covenant or condition contained herein that such party is required to perform and where such failure continues for a period of ten (10) days after written notice thereof is sent to the defaulting party by the non-defaulting party.

**14. Remedies.** Upon default by either party under this Lease, the non-defaulting party may avail itself of any remedy available pursuant to Florida law, including terminating the remainder of this Lease agreement.

**15. Termination.** This Agreement may be terminated by the County upon thirty (30) days advance written notice to the other party.

- A. Termination for Convenience. In the event this Agreement is terminated or cancelled upon the request and for the convenience of County with the required 30 day advance written notice, County shall reimburse Lessor for actual work satisfactorily completed.
- B. Termination for Cause. Termination by County for cause, default, or negligence on the part of Lessor shall be excluded from the foregoing provision. Termination costs, if any, shall not apply. The 30-day advance notice requirement is waived in the event of termination for cause.

- C. If funds are not budgeted and appropriated in any fiscal year for payments hereunder for the then current or succeeding fiscal year, this Lease shall impose no obligation on the County as to such current or succeeding fiscal year and shall become null and void except as to the lease payments herein agreed upon for which funds shall have been appropriated and budgeted, and no right of action or damage shall accrue to the benefit of Lessor, its successors and assigns. If the provisions of this section are used by the County, the County agrees to notify Lessor, or its assigns, immediately if funds are not budgeted and to surrender peaceably possession of the equipment to Lessor or its assignee.

**16. Notices.** Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

If to Lessor:

Gary Coffman, CEO  
P.O. Box 1810  
Ocala, Florida 34478

If to County:

County Manager  
Lake County Administration Bldg.  
Post Office Box 7800  
Tavares, Florida 32778-7800

cc: Jim Stivender, Director  
Dept. of Public Works  
437 Ardice Avenue  
Eustis, Florida 32726

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

**17. Scope of Agreement.** This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

**18. Waiver.** The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

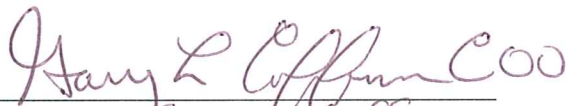
**19. Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Operating Lease Agreement between Lake County and Highland Tractor Co. for Wheel Loaders;  
12-0809

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature: County, through its Board of County Commissioners, signing by and through its Chairman on the 12 day of June, 2012 and by Lessor through its duly authorized representative.

**LESSOR:**

Highland Tractor Co.

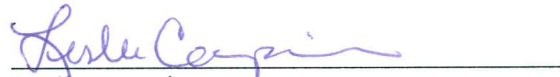
  
Name: Gary L. Coffman  
Title: Chief Operating Officer

**COUNTY:**

ATTEST:


  
Neil Kelly, Clerk  
of the Board of County  
Commissioners of Lake  
County, Florida

LAKE COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

  
Leslie Campione  
Chairman

This 13<sup>th</sup> day of June, 2012

Approved as to form and legality:

  
Sanford A. Minkoff  
County Attorney



## EXHIBIT A – EQUIPMENT AND PAYMENT SCHEDULE

**Equipment<sup>1</sup>:** John Deere 644K  
**Number:** Four (4) shall be provided  
**Delivery Date:** 120 days from full execution of the Agreement  
**Payment Terms:** \$2,909.64/month/loader – paid one month in arrears  
  
**Contract Total<sup>2</sup>:** \$698,313.60

1. Equipment shall satisfy all specifications set forth in the scope of services below.
2. Total price includes full warranty and full maintenance on all units for sixty (60) months.

### Requirements:

Public Works Wheel Loader

General: The four-wheel drive wheel loaders shall be new, unused current production articulated frame, z bar loader linkage type model.

Please mark if required specifications are met by checking the appropriate line.

### Engine:

Yes ☒ No ☐

- Diesel powered, six cylinder, four cycle, turbo charged, direct injection, liquid cooled with a minimum net SAE rating of 190 horsepower
- Permanent anti-freeze and corrosion protection
- Engine hour meter
- Vertical exhaust with rain cap or curved exhaust pipe
- Dry type air cleaner with primary and secondary elements, and service (restriction) indicator
- Reversible or blower (ejector) fan
- Fuel capacity of 75 gallons (minimum)

Engine manufacturer	<u>John Deere</u>
Engine horsepower	<u>232</u>
RPM's	<u>1700</u>



Transmission:

Yes ☒ No ☐

- Power shift transmission with torque converter
- Four (4) forward and three (3) reverse speeds (minimum)
- Top speed of machine 21 MPH (minimum)
- Speed and direction changes should be able to be made on the go, without machine hesitation

Drivetrain:

Yes ☒ No ☐

- Inboard planetary final drives to each wheel
- Torque proportioning differentials in both axles
- Lock/unlock differential (no-spin) in at least one axle, (torque proportioning axles alone do not meet this specification)
- Four wheel drive

Loader:

Yes ☒ No ☐

- Fenders front and rear (rear fenders not required if deck serves the same purpose as fenders)
- Center point frame articulation
- Spread hitch shall have double tapered roller bearings at pivot points
- Oscillating rear axle, minimum 26 degrees total
- Transmission side frame guards
- Drawbar/hitch with pin
- Articulation locking bar/strut
- Lockable doors
- Vandalism protection
- Maximum height 11'4"
- Wheelbase 10'5" (minimum)

Hydraulics/Steering:

Yes ☒ No ☐

- Automatic bucket return to dig/lower control
- Automatic boom height
- Fully hydraulic steering with 37-degree full articulation steering angle both left and right of center and shall perform independent of engine speed variations

Brakes:

Yes ☒ No ☐

- Fully enclosed and sealed 4 wheel wet disc type

Bucket:

Yes ☒ No ☐

- Loader shall be equipped with a manual quick coupler to allow for easy bucket changes. General purpose bucket (4.25 yard minimum) with bolt-on cutting edge
- Loader shall also be equipped with a multipurpose (4 way) bucket (2.75 yard minimum and 3 yard maximum) with bolt-on cutting edge
- Loader shall be equipped with hydraulic capabilities (third hydraulic function) to operate multipurpose (4 way) bucket
- Hydraulic hoses feeding multipurpose bucket shall have quick disconnects to allow for easy bucket changes
- Loader shall be equipped with counterweight if required due to quick coupler and multipurpose bucket

Performance:

Yes ☒ No ☐

- The machine shall have an operating weight enough to allow it to be capable of safely handling the 4.25 yard (minimum general purpose bucket in this specification, when it is fully loaded with material having a density of 3400 pounds per cubic yard
- Breakout force 32,000 pounds (minimum)
- Static tip load (full turn) 23,000 pounds (minimum)
- Dump clearance 9 feet (minimum)

Tires/Wheels:

Yes ☒ No ☐

- Loader shall have four 23.5-25 12 ply (L-2) Sure Grip loader tires mounted on construction equipment type (multi-piece) wheels

Cab:

Yes ☒ No ☐

- Fully enclosed ROPS (Rollover Protection System) cab, sound suppressed with tinted safety glass, air conditioning, heater and defroster
- Adjustable suspension seat with seat belt
- Adjustable steering wheel
- One inside and two outside rear-view mirrors
- Front and rear windshield wipers/washers
- Floor Mat
- 12-volt power receptacle in cab to provide for radio/cell phone

Electrical:

Yes ☒ No ☐

- 24 volt electrical system with dual batteries and 50 amp (minimum) alternator
- Standard instrumentation and interior lighting
- Engine electronic monitoring/warning system
- Two front head lights
- Rear stop and taillights
- Front and rear turn signals with hazard flasher
- Front and rear work lights

- Horn
- Back up alarm
- Battery master disconnect switch

Miscellaneous:

Yes ☒ No ☐

- Standard factory color



## EXHIBIT B:

### ASSIGNMENT AGREEMENT

RE: That certain Operating Lease Agreement Between Lake County, Florida and \_\_\_\_\_, for a Wheel Loaders (hereinafter collectively referred to as the "Lease") and entered into by and between \_\_\_\_\_, as "Manufacturer", and \_\_\_\_\_, as "Finance Company."

#### RECITALS

**WHEREAS**, Manufacturer desires to sell, transfer, and assign to Finance Company (1) all of its right, title and interest in and to the Lease and all rights and remedies thereunder, (2) all of the items of equipment more fully described in the Lease Schedule (the "Equipment"), (3) all proceeds of the foregoing, and (4) all lease payments and other sums due and to become due under the Lease Schedule (the "Payments") (all of the foregoing are collectively hereinafter referred to as the "Assets").

**WHEREAS**, in order to induce Finance Company to finance and take assignment of the Assets from Manufacturer, Manufacturer has agreed to certain representations, warranties, and covenants (as detailed herein); Finance Company intends to finance and take assignment of the Assets in reliance on such representations, warranties and covenants;

**NOW, THEREFORE**, in consideration of the above premises and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Representations, Warranties and Covenants.** In consideration of the purchase price paid (or to be paid to Manufacturer), Manufacturer hereby sells, transfers, and assigns to Finance Company all of its right, title and interest in and to the Assets. Manufacturer hereby represents, warrants and covenants to Finance Company that: (a) Manufacturer has delivered to Finance Company an original of the Lease and all documents related thereto (the "Documents"). The Documents represent true, correct and complete originals of the documents executed by Manufacturer under the Lease. Each of the Documents are duly executed by the County are genuine, valid, and enforceable in accordance with their terms. (b) All of the names, addresses, descriptions of Equipment and other statements of fact contained in the Lease are true and correct. (c) There are no agreements between Manufacturer and County in connection with the Lease, except as contained in the Documents provided to Finance Company by Manufacturer. No express or implied warranties have been made by Manufacturer to County except as contained in the Documents provided to Finance Company by Manufacturer. (d) Finance Company shall have good and marketable title to all of the Assets, free and clear of all liens, claims, security interests and encumbrances on and as of the date hereof. Manufacturer shall have no authority, without Finance Company's prior written consent, to repossess or consent to the return of the Equipment, or to modify the terms of the Lease. (e) All of the Equipment has been delivered to County's address indicated in the Lease, properly installed and in good working order, condition and repair, conforming to specifications. (f) Manufacturer shall provide all required maintenance and service of the Equipment to the satisfaction of County. Finance Company shall additionally assume and shall be responsible for performing any obligations of Manufacturer in respect of the Equipment, including all maintenance responsibilities to the satisfaction of County (g) As of the date of this Assignment Agreement, Manufacturer has no knowledge of any facts which may impair the validity of the Lease, or would constitute a default under the terms or the Lease, or if presented or disclosed to Finance Company would have materially influenced Finance Company's decision to purchase and take assignment of the Lease. Manufacturer has not committed any fraudulent act or participated in any fraudulent activity in connection with the Lease or the Equipment. (h) Manufacturer has not received any security deposits, advance rent payments, or other monies from County, except as previously disclosed. (i) County is a state, territory, or possession of the United States, or fully constituted political subdivision or agency of any of the foregoing, or the District of Columbia. (j) Manufacturer has complied and will continue to comply with all bidding requirements applicable to the Lease and with all requirements of any

applicable Request for Proposal or other purchase or offering document issued by the County in connection with the Lease (the "RFP") including, without limitation, those applicable to the Equipment (and any services to be provided by Manufacturer) and all federal and state statutes and regulations governing equal employment opportunity, affirmative action and environmental protection. (k) Manufacturer is the entity which submitted the proposal in response to the RFP. (l) County has complied fully with all applicable laws governing the approval and execution of the Lease, including without limitation open meetings, public bidding and appropriations. (m) the Equipment will be used solely by County in connection with its governmental and proprietary functions and will not be used by or for the benefit of any private entity. (n) Manufacturer shall not take any action (or fail to take any action) which causes the Lease to be cancelled or otherwise terminated by County. (o) Manufacturer shall indemnify and hold harmless Finance Company and its affiliates, subsidiaries, employees, officers and agents from any and all losses, claims by or against Finance Company, liabilities, demands and expenses whatsoever, including reasonable attorney's fees and costs, arising out of or in connection with any breach by Manufacturer of its representations, warranties, covenants or obligations, and shall, at Finance Company's request, purchase the Lease and the Equipment from Finance Company for an amount equal to the Net Book Value (as such term is defined below) thereof. Upon receipt of such Net Book Value, Finance Company shall sell, transfer and assign to Manufacturer all of their right, title and interest in and to the Lease and the Equipment **AS-IS, WHERE-IS, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.** In the event Finance Company is deemed by any third party to be a Contractor or a sub-contractor under the RFP and Finance Company determines in its sole judgment that it does not comply with any provision of the RFP which would be applicable thereto, in which case the purchase of the Lease shall be effective as of the day preceding the date on which Finance Company is deemed to be a Contractor.

IN WITNESS WHEREOF, the parties have signed this Assignment Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2012.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_